

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

**MARTIN FLYER, INC.**

**EMPLOYER**

**and**

**CASE NO: 2-RD-1508**

**ANGEL L. PABON, An Individual**

**and**

**SEIU, LOCAL 74, AFL-CIO**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record<sup>1</sup> in this proceeding, it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.
2. The parties stipulated and I find that Martin Flyer, Inc. (Employer), a New York corporation, with an office and principal place of business located at 48 West 48<sup>th</sup> Street, New York, New York, is engaged in the manufacture and

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<sup>1</sup> All parties waived the filing of briefs.

wholesale sale of jewelry. Annually, in the course and conduct of its business operations, the Employer derives gross revenues in excess of \$50,000 from the wholesale sale of jewelry to various retailers throughout the United States, and purchases goods and materials valued in excess of \$5,000 directly from located outside the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The that SEIU, Local 74, AFL-CIO, (Petitioner), is a labor organization within the meaning of Section 2(5) of the Act.

Accordingly, based upon the stipulation of the parties, the record establishes and I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) of the Act.

5. The Petition seeks an election in a unit of all full-time and regular part-time production employees in the jewelry, polishing and setting departments of the Employer, excluding all supervisors, office and factory clerical employees, porters, messengers, watchmen, professional employees, and non-producing foremen and all other non-producing employees.

The parties stipulated that the petitioned-for unit is an appropriate unit for collective bargaining.

In view of the foregoing, I find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

INCLUDED: All full-time and regular part-time Production employees in the jewelry, polishing, and setting departments, employed by the Employer at its 48 West 48<sup>th</sup> Street, New York, New York facility.

EXCLUDED: all supervisors, office and factory clerical employees, porters, messengers, watchmen, professional employees, and non-producing foremen, and all other non-producing employees.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time<sup>2</sup> and place set forth in the notice of election<sup>3</sup> to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged

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<sup>2</sup> Pursuant to Section 101.21 (d) of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25<sup>th</sup> and 30<sup>th</sup> day after the date of this decision.

<sup>3</sup> The Board has adopted a rule requiring that election notices be posted by an employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, the Board has held that Section 103.20 (c) of the Board's Rules requires that an employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB No. 52 (1995).

in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>4</sup> Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by SEIU, Local 74, AFL-CIO.<sup>5</sup>

Dated at New York, New York,  
April 27, 2004

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/S/ Celeste J. Mattina  
Regional Director, Region 2  
National Labor Relations Board  
26 Federal Plaza, Room 3614  
New York, New York 10278

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<sup>4</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **May 4, 2004**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

<sup>5</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **May 11, 2004**.

